

**EXHIBIT DDD TO
CISNEROS DECLARATION
REDACTED VERSION**

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE: HIGH-TECH EMPLOYEE)
ANTITRUST LITIGATION)
) No. 11-CV-2509-LHK
THIS DOCUMENT RELATES TO:)
ALL ACTIONS.)

VIDEO DEPOSITION OF ELIZABETH BECKER, Ph.D.
December 10, 2013

Reported by: Anne Torreano, CSR No. 10520

09:48:59 1 guess, informative to some other people that were
09:49:01 2 designing recommendations.

09:49:02 3 So I would say that I wasn't the person
09:49:05 4 making the recommendations but the person doing some
09:49:08 5 number-crunching to assist in those who were
09:49:11 6 thinking about, you know, whether they would want to
09:49:18 7 change some of the processes that were in place
09:49:21 8 within their own structure.

09:49:22 9 Q. Okay. Any other assignments you can recall
09:49:30 10 in your career where you have been called on to make
09:49:35 11 recommendations about compensation in a company?

09:49:37 12 A. So let me just be clear that I think what I
09:49:45 13 just said is that I wasn't called upon to make
09:49:47 14 recommendations in the cases that I've talked about
09:49:49 15 but was doing quantitative analysis to help other
09:49:52 16 people.

09:49:52 17 So I don't quite understand your
09:49:54 18 question --

09:49:54 19 Q. Okay.

09:49:54 20 A. -- because it sounds like you're asking are
09:49:55 21 there other places where I made recommendations, but
09:49:57 22 I didn't make recommendations in those circumstances
09:50:00 23 I've just been talking about.

09:50:01 24 Q. Okay. So just -- we may have just been
09:50:04 25 misunderstanding each other. I misunderstood you,

09:50:09 1 not -- not the opposite.

09:50:09 2 So you have never in your career made
09:50:12 3 recommendations about compensation changes. Your
09:50:14 4 role has been to do qualitative analysis, and other
09:50:17 5 people handle that recommendation part of it?

09:50:20 6 MR. KIERNAN: Object to form.

09:50:21 7 THE WITNESS: Yeah, I think my -- I think
09:50:23 8 that's a fair characterization. My primary role is
09:50:26 9 to do qualitative analysis in order to help those
09:50:30 10 who have to make decisions ultimately about what's
09:50:33 11 happening within their own employee populations to
09:50:37 12 help them make decisions that may be better
09:50:41 13 informed, I hope, by the work that I do.

09:50:44 14 So I -- I'm not really the one that's
09:50:47 15 making the recommendations. I'm the one that's
09:50:49 16 providing information that may -- you know, may or
09:50:51 17 may not have an influence on recommendations that
09:50:54 18 are made.

09:50:54 19 BY MS. DERMODY:

09:50:54 20 Q. Okay. In your prior work, have you studied
09:50:59 21 the relationship between bonus pay and base pay?

09:51:11 22 MR. KIERNAN: Object to form.

09:51:12 23 THE WITNESS: That's a pretty broad
09:51:17 24 question.

09:51:19 25 BY MS. DERMODY:

09:51:19 1 Q. Have you studied whether bonus pay and base
09:51:22 2 pay are correlated in your other work?

09:51:29 3 A. I'm not sure I've ever done a study where
09:51:37 4 specifically I was evaluating correlation between
09:51:39 5 base and bonus. I've certainly looked at
09:51:42 6 compensation systems that had both base and bonus.
09:51:45 7 But specific correlation studies? No, I'm not
09:51:49 8 recalling that I've ever specifically evaluated
09:51:51 9 correlations between them.

09:51:53 10 Q. Okay. And same question for stock options
09:51:58 11 or equity compensation and base salary.

09:52:00 12 Have you ever done any study to see whether
09:52:02 13 they're correlated in any company?

09:52:04 14 A. I think the answer is the same, is that
09:52:06 15 I've certainly looked at companies that paid both in
09:52:09 16 the form of base salary and equity. I'm not
09:52:16 17 recalling any time where I specifically evaluated a
09:52:19 18 correlation between them.

09:52:22 19 Q. Okay. Over the past year, how much of your
09:52:30 20 income has been attributable to litigation matters
09:52:33 21 you're working on?

09:52:34 22 A. Well, that's not really how I'm -- I mean,
09:52:47 23 I don't -- it would be hard for me to figure that
09:52:52 24 out, I guess, the answer, because I'm not -- you
09:52:57 25 know, I work for a company, and I don't get paid in

09:53:04 1 a way that makes it easy for me to answer that
09:53:06 2 question, I guess is the answer.

09:53:09 3 Q. What's your best estimate of how much of
09:53:15 4 your income is attributable to litigation matters?

09:53:18 5 A. Now we have to go back to multiplying and
09:53:23 6 dividing; right?

09:53:25 7 How much of my income is directly related
09:53:28 8 to work that I've done on litigation matters? Like
09:53:35 9 incrementally related? I don't even understand your
09:53:38 10 question exactly.

09:53:39 11 Q. Do you get paid an income from your current
09:53:42 12 employer?

09:53:42 13 A. I do get paid by my current employer, yes.

09:53:45 14 Q. Okay. And do you have a set base salary?

09:53:48 15 A. I have a base salary, yes.

09:53:49 16 Q. Okay. What is your annual base salary?

09:53:52 17 A. You know, I should -- it's 300,000.

09:53:58 18 Q. Okay. And do you get paid any type of
09:54:02 19 interest in the cases that you work on that are
09:54:05 20 billed by your company?

09:54:07 21 A. I wouldn't --

09:54:08 22 MR. KIERNAN: Object to form.

09:54:08 23 THE WITNESS: Yes, I wouldn't characterize
09:54:11 24 it as me being paid interest in my cases.

09:54:13 25 BY MS. DERMODY:

09:54:13 1 Q. Okay. Do you get paid a bonus based on the
09:54:17 2 money you bring in from the cases that you work on?

09:54:20 3 A. I get paid a bonus that has multiple
09:54:25 4 criteria that are considered.

09:54:30 5 Q. Okay.

09:54:31 6 A. So -- yeah, so, you know, there -- it's --
09:54:35 7 there's some qualitative elements to it. There are
09:54:38 8 some -- you know, some other metrics that are used
09:54:43 9 in the determination of the bonus, but it's not --
09:54:46 10 it's not strictly formulaic, I guess is what I'm
09:54:50 11 trying to say.

09:54:50 12 Q. Okay. So why don't we take last year as an
09:54:53 13 example, because it's over. So what was your
09:54:55 14 compensation package last year?

09:54:56 15 A. What was the total amount I earned?

09:54:58 16 Q. Well, let's start with the components of
09:55:00 17 it. You had a base salary presumably?

09:55:02 18 A. Right.

09:55:02 19 Q. Okay. What else?

09:55:03 20 A. A bonus.

09:55:04 21 Q. Bonus. Okay.

09:55:09 22 Anything else?

09:55:10 23 A. Well, I had expense reimbursements, but I
09:55:15 24 don't think we're counting that as income; right?

09:55:18 25 Q. Right.

02:20:31 1 he made no effort to support with facts or data, the
02:20:34 2 data show that bonus and equity are not fixed to
02:20:37 3 base salary and vary highly across employees, time
02:20:40 4 and defendants."

02:20:41 5 Do you see that?

02:20:41 6 A. Yes.

02:20:42 7 Q. I think we covered this earlier today, but
02:20:44 8 just if you can confirm for me, you performed no
02:20:48 9 correlation study to determine the relationship, if
02:20:50 10 any, between equity and base salary here; is that
02:20:52 11 correct?

02:20:53 12 MR. KIERNAN: Object to form.

02:20:53 13 THE WITNESS: No, that's not -- that's -- I
02:21:02 14 did examine the relationship between bonus and
02:21:08 15 salary and between equity and salary. The reason I
02:21:10 16 have this as a summary of opinions is because I
02:21:12 17 believe that I have evidence that the bonus and
02:21:15 18 equity are not fixed to base salary in the way that
02:21:20 19 Dr. Hallock describes, and I have some, you know,
02:21:23 20 analyses in my report that support that empirically,
02:21:26 21 and I also, you know, having reviewed the -- you
02:21:30 22 know, the depositions and declarations we were
02:21:32 23 talking about earlier, also have an understanding
02:21:36 24 that bonus and in particular equity awards could
02:21:41 25 vary much more greatly than what base salary would

02:21:44 1 vary.

02:21:44 2 BY MS. DERMODY:

02:21:44 3 Q. Okay. The statement here is about data, so
02:21:46 4 let's stick with your data support for this
02:21:49 5 statement. You say the data show.

02:21:50 6 What is the correlation study that you did
02:21:53 7 to examine the question of whether there was a
02:21:56 8 relationship between base salary and bonus at any of
02:21:59 9 the seven defendants?

02:22:00 10 MR. KIERNAN: Object to form.

02:22:01 11 THE WITNESS: Well, I think it's a -- it's
02:22:06 12 not a correlation study. It's an -- I would call it
02:22:11 13 more of an anticorrelation study, which is that the
02:22:16 14 bonus is varying with -- it's varying in relation to
02:22:22 15 salary. I mean, those are the studies that really
02:22:25 16 show how the base salary, bonus and equity vary in
02:22:33 17 relation to one another over time and how varied
02:22:36 18 they are across the different defendants.

02:22:37 19 So I think that the --

02:22:43 20 BY MS. DERMODY:

02:22:43 21 Q. So what your studies focused on is a
02:22:46 22 snapshot describing what is the mix --

02:22:48 23 MR. KIERNAN: Hang on.

02:22:49 24 BY MS. DERMODY:

02:22:49 25 Q. -- of different --

02:22:49 1 MR. KIERNAN: Were you finished with your
02:22:50 2 answer?

02:22:50 3 THE WITNESS: No, I just wanted to point
02:22:52 4 out the exhibits that I think are the summaries of
02:22:56 5 those results are in -- you know, basically I would
02:23:02 6 say it was in -- you know, it's in the Exhibits B,
02:23:06 7 you know, B-3, B-4, B-5, B-6, you know, in those --
02:23:14 8 B-7 and B-8. Those are the summary -- you know,
02:23:18 9 those are the exhibits that summarize the data
02:23:20 10 analysis of how variable bonuses are.

02:23:24 11 And then the ones that follow that are the
02:23:27 12 analyses that describe the variability of equity
02:23:32 13 relative to base salary.

02:23:34 14 BY MS. DERMODY:

02:23:34 15 Q. So this is showing that the mix of total
02:23:39 16 comp that is base versus bonus changes over time,
02:23:45 17 but it's not actually studying the relationship
02:23:48 18 between people of the same base salary and their
02:23:52 19 bonus across the same year in any given company.

02:23:56 20 MR. KIERNAN: Object to form.

02:23:57 21 THE WITNESS: Which one are you looking at?

02:23:59 22 BY MS. DERMODY:

02:23:59 23 Q. Well, any of these. These B-3s, whatever.
02:24:01 24 It's -- you don't even have to look at the chart.
02:24:03 25 It's just a question.

02:24:05 1 MR. KIERNAN: Same objection.

02:24:06 2 THE WITNESS: No, I mean, what B-3 is
02:24:09 3 showing is that the ratio -- I mean, this one has to
02:24:11 4 do with equity. You know, that type of an incentive
02:24:15 5 compensation. That equity grants relative to base
02:24:18 6 salary, you know, cover an enormous range from, you
02:24:22 7 know, from some people getting zero to some people
02:24:26 8 getting two times or, in the case of Google, [REDACTED]

02:24:29 9 [REDACTED]
02:24:30 10 We even had to exclude some to make the
02:24:33 11 graph even being meaningful. That there are some
02:24:36 12 people that have ratios that are greater than four
02:24:38 13 times, that their equity grants relative to their
02:24:42 14 base salary may be as much as four times their base
02:24:45 15 salary, while you have other people that didn't get
02:24:48 16 any. Or some people that got 10 or 20 percent.

02:24:51 17 So there's a high variability in terms of
02:24:53 18 incentive awards across the people -- across base
02:24:54 19 salaries.

02:24:54 20 BY MS. DERMODY:

02:24:54 21 Q. But you made no attempt to plot whether
02:24:57 22 there was a relationship between the base salary of
02:24:59 23 any individual or set of employees and the amount of
02:25:02 24 bonus or equity that that group was getting?

02:25:05 25 A. These are summaries of individuals, so each

02:25:08 1 of these little bars represents an accumulation of
02:25:10 2 all the individuals that are at that ratio of equity
02:25:14 3 grant to base salary. So what we're saying is --
02:25:17 4 Q. But you're not trying to do a plot of
02:25:21 5 everyone that is a, you know, Google T-4, relative
02:25:25 6 to their base salary, what is -- what is the
02:25:29 7 regression that shows the relationship between that
02:25:32 8 and the bonus that they got or the equity that they
02:25:37 9 got, or what is the correlation chart that shows
02:25:39 10 whether there is a relationship between a person's
02:25:43 11 base salary and the amount of the grant they got,
02:25:46 12 not every single grant that was given in the company
02:25:48 13 but within a same salary band?

02:25:51 14 A. Yeah --

02:25:51 15 MR. KIERNAN: Object to form.

02:25:52 16 THE WITNESS: -- I think maybe you're just
02:25:53 17 not understanding. Because this is actually --
02:25:55 18 these are actually pictures of the ratio of the, you
02:26:01 19 know, equity grants to the base salary. So in
02:26:05 20 that --

02:26:05 21 BY MS. DERMODY:

02:26:05 22 Q. For every employee of every different
02:26:07 23 salary?

02:26:08 24 A. Yes. Well, I mean, with the qualifications
02:26:11 25 that are listed down here is that -- for example,

02:26:15 1 some of these we didn't report the really extremely
02:26:19 2 high values, just because then the picture gets a
02:26:21 3 little uninformative. You know, if you've got to
02:26:23 4 pick some -- a number that's way out here, then all
02:26:25 5 of this sort of gets squished up.

02:26:28 6 But because these are ratios of equity
02:26:31 7 grants to base salary, effectively it's got a
02:26:34 8 control in it for the base salary. I mean, it's
02:26:36 9 a -- it's a ratio relative to base salary, and so
02:26:41 10 it's telling you the variability in the equity
02:26:45 11 awards relative to the base.

02:26:47 12 That's exactly the exercise that was
02:26:50 13 undertaken here, is to understand the variability in
02:26:53 14 these awards relative to the base.

02:26:55 15 And as you can see, if it's ranging from
02:26:59 16 zero to four times base, I think I would say that
02:27:02 17 that shows an absence of a fixed relationship.

02:27:05 18 Q. And there's no study between 2005 and 2009
02:27:08 19 of the relationship between base salary and bonus or
02:27:14 20 base salary and equity across that time. There's no
02:27:19 21 correlation study that does that?

02:27:20 22 A. Oh, no --

02:27:21 23 MR. KIERNAN: Object to form.

02:27:22 24 THE WITNESS: -- these -- these -- you
02:27:24 25 know, we've -- some of these that are portrayed here

02:27:27 1 as Exhibit B-3, so for Apple, Google and -- so we
02:27:34 2 did Adobe.

02:27:35 3 BY MS. DERMODY:

02:27:35 4 Q. This is 2006?

02:27:36 5 A. This is 2007, Exhibit B-3. It's 2007.

02:27:40 6 Q. I'm sorry. I'm looking at Appendix B-3.

02:27:43 7 What are you looking at? Because I was looking
02:27:43 8 at --

02:27:43 9 A. Oh, I'm looking at the exhibits.

02:27:46 10 But that's a good point. That's exactly
02:27:47 11 what I was going to say, was that because a lot of
02:27:50 12 these analyses are done for different defendants and
02:27:55 13 we're doing things across time, a good deal of what
02:27:59 14 was pulled into the report in terms of exhibits was
02:28:02 15 more representative in order to explain the analyses
02:28:06 16 and looked at in more detail. And then the more
02:28:10 17 comprehensive viewpoints is -- you know, is what's
02:28:14 18 reported back in the appendices.

02:28:16 19 And so Appendix B-3 then goes through
02:28:21 20 Intel, from -- you know, through all the years. And
02:28:22 21 so it's -- I know it's a little bit much, but you do
02:28:25 22 have to like flip through from 2001, Intel, all the
02:28:29 23 way through 2011 at Intel.

02:28:33 24 But that's why the appendix is so
02:28:35 25 voluminous, because we did everything year by year

02:28:37 1 so that you can see that these types of awards and
02:28:39 2 this type of variability was persistent throughout
02:28:42 3 the entire conduct period.

02:28:44 4 Q. Dr. Becker, what's a correlation study?

02:28:53 5 A. And I guess there are a variety of ways to
02:28:56 6 describe that.

02:28:56 7 Q. What's the scientific way to describe
02:28:59 8 that? If you're writing a report that's used a
02:29:02 9 correlation study, what would it be?

02:29:04 10 MR. KIERNAN: Object to form.

02:29:04 11 THE WITNESS: I mean, generally speaking,
02:29:04 12 with correlation you're talking about relationships
02:29:07 13 between variables.

02:29:08 14 BY MS. DERMODY:

02:29:08 15 Q. And how do you study that?

02:29:08 16 A. I mean, it's not that complex a concept, is
02:29:10 17 that you -- you know, you look at relationships
02:29:12 18 between variables.

02:29:13 19 I would say that's what this is. This is a
02:29:15 20 relationship between equity awards and base salary.
02:29:21 21 In order to be able to evaluate what it looks like
02:29:23 22 for individuals, and we're talking about individuals
02:29:25 23 and we want to see individual variation as opposed
02:29:28 24 to just correlation at the mean, this exactly gives
02:29:31 25 you the picture of what that individual variation

02:29:34 1 looks like for all of the people at each of these
02:29:37 2 defendants in any one year.

02:29:39 3 Q. Is -- let's see.

02:29:48 4 Is your assortitative mating study a
02:29:52 5 correlation study?

02:29:55 6 A. Well, you could -- you can call regression
02:29:59 7 correlation because it's, you know, a sort of a
02:30:00 8 sophisticated type of a correlation analysis, so I
02:30:04 9 guess you could use that phrase.

02:30:07 10 We're evaluating relationships between
02:30:09 11 variables in that study. That was without regard to
02:30:13 12 the question of how things looked individual by
02:30:17 13 individual, and I think, for purposes of
02:30:20 14 understanding and testing Dr. Hallock's propagation
02:30:24 15 mechanism, I think it's much more important to
02:30:26 16 understand the individual-to-individual variation
02:30:31 17 because he's talking about a propagation mechanism
02:30:33 18 that starts out with an individual or a small number
02:30:36 19 of individuals failing to get cold-calls that then
02:30:41 20 causes some suppressive effect to go to other
02:30:44 21 individuals.

02:30:44 22 So you have to look at it on an individual
02:30:48 23 basis, I think, or it's valuable to look at it on an
02:30:52 24 individual basis when you're testing Dr. Hallock's
02:30:54 25 theories.

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I certify under penalty of perjury that the foregoing is true and correct.

Date _____
ELIZABETH BECKER, Ph.D.

1 REPORTER'S CERTIFICATE

2 I, Anne Torreano, Certified Shorthand
3 Reporter licensed in the State of California,
4 License No. 10520, hereby certify that the deponent
5 was by me first duly sworn, and the foregoing
6 testimony was reported by me and was thereafter
7 transcribed with computer-aided transcription; that
8 the foregoing is a full, complete, and true record
9 of said proceedings.

10 I further certify that I am not of counsel
11 or attorney for either or any of the parties in the
12 foregoing proceeding and caption named or in any way
13 interested in the outcome of the cause in said
14 caption.

15 The dismantling, unsealing, or unbinding of
16 the original transcript will render the reporter's
17 certificates null and void.

18 In witness whereof, I have subscribed my
19 name this 20th day of December, 2013.

20 ☐ Reading and Signing was requested.

21 ☐ Reading and Signing was waived.

22 ☒ Reading and Signing was not requested.

23
24
25 ANNE M. TORREANO, CSR No. 10520